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The EU Listing Act: Prospectus and Listing Requirement Changes for Greek Issuers

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The EU Listing Act package forms part of the broader deliberations on the Capital Markets Union, the core aim of which is to improve access to market-based financing for EU companies at each stage of their development. The package was published in the EU Official Journal on November 14, 2024, following its approval by the EU Council.

Accounting for a phased implementation (starting from December 4, 2024, for certain provisions, and spanning 15, 18, or 24 months following its entry into force for others), the EU Listing Act is split into three legislative components:

Regulation (EU) 2024/2809 (the Listing Regulation), amending Regulation (EU) 2017/1129 (the Prospectus Regulation), Regulation (EU) No. 596/2014 (the Market Abuse Regulation, or the MAR), and Regulation (EU) No. 600/2014 (the Markets in Financial Instruments Regulation);

Directive (EU) 2024/2811 (the Listing Directive), amending Directive 2014/65/EU (the Second Markets in Financial Instruments Directive) and repealing Directive 2001/34/EC, and aiming to streamline the listing requirements and boost investment research on SMEs; and

Directive (EU) 2024/2810 (the MVS Directive) on multiple-vote share (MVS) structures in companies that seek admission to trading of their shares on a multilateral trading facility (MTF), which aims to balance out the founding shareholders' loss of control concerns that often disincentivise the listing of SMEs in the EU and make the UK and US stock markets more appealing.

The three pillars of the EU Listing Act introduce targeted amendments across the board (pre- and post-IPO) with a view to:

- Facilitating initial listings and follow-on capital raisings on stock exchanges; and
- Reducing the compliance costs over the life of listed companies.

This article focuses on the changes introduced by the EU Listing Act, in combination with the imminent adoption by the Greek Parliament of a new law on the bolstering of the domestic capital market (the New Law), to the prospectus regime and listing requirements applicable to issuers in Greece.

Changes to the Prospectus Regime

The Listing Regulation reduces the excess bureaucratic burden and cost incurred in relation to the publication of a (long-form) prospectus (at the IPO and the post-IPO phase), thereby facilitating initial and follow-on offerings. The key details are as follows.

Harmonised Exemption Threshold for Small Offers

The offering threshold below which a prospectus is not required is increased to an aggregate of €12 million in the EU, over a period of 12 months, and the threshold becomes mandatory for all member states (while they are allowed to lower the exemption threshold to €5 million). Under the previous regime, member states had the discretion to opt in to the exemption threshold or not, while they were free to determine the threshold, between €1 million and €8 million over a period of 12 months, allowing for divergent exemption thresholds.

Greece availed of the option provided for under Article 3 of the Prospectus Regulation and exempted all offers below €5 million over a period of 12 months from the prospectus requirement (subject to the obligation to publish an information document for offers above €500,000). The threshold will be increased to €8 million for public offers in Greece as of the introduction of the New Law. For offerings between €1 million and €8 million (the previous range was €500,000 – €5 million), an information document will be required, which will not be approved but only filed with the Hellenic Capital Market Commission (HCMC).

Tap Issuances and Seasoned Issuers

The tap issue mechanism – which allows issuers to raise additional funds by issuing securities fungible with those already issued, within 12 months, without the need for a prospectus – is henceforth capped at 30% (instead of 20%) of the original issue amount and expressly extends to subscription rights and shares originating from conversion, exchange, or a similar exercise of rights embedded in other securities. Importantly, a harmonised information document is introduced at EU level (the Annex IX Document).

The Annex IX Document should be filed with the competent authority of the home member state and made available to the public, without being subject to scrutiny and approval. To ensure investor protection, it is structured as a short-form document containing a

statement of compliance with ongoing and periodic reporting and transparency obligations and some key information that is relevant to the issue but not yet publicly available (e.g., use of proceeds).

Moreover, seasoned issuers (admitted to trading on a regulated market or an SME growth market continuously for at least the 18 months preceding the offer of the new securities) can also make use of the Annex IX Document, regardless of the size of the offering, as long as the securities are not issued in connection with a takeover by means of an exchange offer, a merger, or a division and the issuer is not subject to a restructuring or insolvency proceedings. This, practically, means that seasoned issuers may proceed to unlimited additional issuances without being required to obtain the approval of the competent authority (as would be the case for similar issuances under the previous regime).

Other Secondary Issuances: the EU Follow-On Prospectus

Issuers with listed equity with respect to which an exemption for a subsequent debt/equity issue is not available (e.g., the offering exceeds €12 million, the securities are not fungible with existing listed securities, or the issuer is in financial distress or under corporate transformation) may still get a simplified prospectus approved and published.

The EU Follow-On Prospectus replaces the former simplified prospectus and is condensed to a 50-pager as suggested for issuers that have a track record on a regulated market or an SME growth market. Indeed, continuous listing for at least the last 18 months ensures that a fair amount of information is already publicly available as a result of periodic and ad hoc disclosure obligations under the MAR and the Transparency Directive (for regulated markets) or Delegated Regulation (EU) 2017/565 (for SME growth markets).

The 18-month period is a conscious regulatory choice ensuring that an annual financial report has been published at least once. The EU Follow-On Prospectus (Annex IV and V Document) can also be used in the case of an eventual transfer from an SME growth market to a regulated market. Such versatility facilitates scale-up for issuers. However, in such case, the limited scrutiny period does not apply.

For frequent issuers of securities under a note programme, the base prospectus format remains unchanged.

Improved Readability of the Prospectus

Apart from the broadening of the exemptions and the makeover of the simplified prospectus for secondary issuances, the fully fledged prospectus is also being reshaped to further lighten the disclosures (based on the reduced level of disclosure of the EU Growth Prospectus) for:

- SMEs;
- Issuers other than SMEs whose securities are admitted, or are to be admitted, to trading on an SME growth market; and
- Small unlisted companies whose total consideration for the securities offered to the public is not higher than €50 million over a period of 12 months.

Catering for certain exemptions (such as for equity other than shares, complex instruments, or complex financial history), a page limit is introduced. Furthermore, the most material risk factors shall be presented in limited categories accompanied by a materiality assessment on a scale from low to medium or high risk. Finally, the disclosures' sequence is standardised, while summaries become more 'user-friendly', allowing for the display of information in the form of charts, graphs, or tables. Issuers seeking to simultaneously offer or privately place securities in a third country may be exempt from the page limit as well as the standardised format and sequence.

English Language for Purely Domestic Issuances

Article 27 of the Prospectus Regulation has been revisited, allowing offerors/issuers to choose to draw up the prospectus in a language customary in the sphere of international finance where an offer of securities to the public is made or admission to trading on a regulated market is sought only in the home member state (unless the national competent authority (NCA) has opted out and notified the European Securities and Markets Authority and the European Commission accordingly). This reverses the previous rule, under which NCAs were expected to positively determine the acceptable languages. In Greece, the HCMC has already, as of 2020, determined English as an acceptable language.

Minimum IPO Reading Period

The minimum period of availability of an IPO prospectus has been shortened from six to three working days. This change, effective as of December 4 2024, incentivises swift book-building, to allow for better market risk management and remove any disincentives of listing advisers as to the inclusion of retail investors in IPOs.

Scope of Historical Financial Information

The scope of historical financial information is reduced to the two latest financial years (in lieu of three) for equity securities, or the latest financial year for non-equity securities. The exemption for issuers being in operation for a shorter period remains intact.

Harmonised Listing Requirements

The margin of discretion as to what previously constituted sufficient free float over the life of a listed company was considered an obstacle preventing the regulated market of the Athens Stock Exchange from gaining in depth, liquidity, and marketability. Therefore, the latest amendments to the Athens Exchange Rulebook (the ATHEX Rulebook), in spring 2024, introduced solid free float requirements (upon admission and on a continuous basis), depending on capitalisation. The minimum free float requirement is set to 25% and may be reduced to 15% for companies of larger capitalisation (of at least €200 million).

Even though permitted, the ATHEX Rulebook provisions constitute gold-plating considering the Listing Directive, which reduced the minimum to 10% (on admission), also allowing for alternative national standards to measure whether a sufficient number of shares have been distributed to the public.

At the same time, the ATHEX Rulebook lowered the equity requirement from €3 million to €1 million even before the introduction of the Listing Directive. This requirement does not, however, operate as an alternative to the requirement of a minimum estimated capitalisation of the same amount based on the offering price.

By contrast, under the ATHEX Rulebook, the minimum equity requirement tops up the €40 million foreseeable market capitalisation threshold, while in the Listing Directive, €1 million is the minimum capitalisation, with capital and reserves, including profit and loss, being measured only if the estimated capitalisation cannot be assessed based on the offering price.

In addition, the New Law provides for rules to accommodate the easy transfer of an issuer from the Athens Exchange to the EN.A. (the Alternative Market of the Athens Exchange), whether on the issuer's initiative or by a decision of the Athens Exchange. In this respect, no information document needs to be published for the entry into the EN.A. unless combined with a public offering that does not benefit from an exemption under the Prospectus Regulation. Moreover, issuers may voluntarily resolve on a delisting from the Athens Exchange, when combined with a transfer to the EN.A., only by increased quorum and a majority of two-thirds of the shareholders represented in the meeting.

Multiple-Vote Shares

The MVS Directive seeks to remove the misaligned incentives of controlling shareholders that stand in the way of listing, a phenomenon that is particularly pronounced for SMEs. Particularly in view of the free float requirements, the fear of losing control of the company due to dilution frequently prevents companies with concentrated ownership from going public. This hampers them from diversifying their capital structure and tapping into new sources of funding.

An MVS mechanism disentangles voting rights from economic rights, allowing founders to retain shares that encapsulate a higher number of votes per share than those offered to the public. Under the MVS Directive, member states shall ensure that a company whose shares are not already admitted to trading on a regulated market or an MTF has the right to adopt an MVS structure for the admission to trading of its shares on an MTF without making the adoption of an MVS structure conditional upon the provision of enhanced economic rights for shares without enhanced voting rights. As such, member states are no longer allowed to ban MVSs – at least not for companies intending to go public.

Greek corporate law applicable to Greek issuers that have their shares listed on the Athens Exchange does not currently allow for an MVS mechanism. The New Law provides, however, that issuers listed on a foreign market with MVSs are permitted to have the MVSs admitted to trading in Greece, not only on an MTF but also on a regulated market – provided that they comply with the laws of their home country and that the host regulated market or MTF ensures that MVSs are clearly identifiable as such.

The authors therefore expect that the ATHEX and the EN.A. rulebooks will be amended soon to accommodate the new possibility of MVSs of foreign issuers being admitted to the Athens Exchange and EN.A., respectively. It is also inevitable that the New Law will indirectly trigger a more focused discussion on the introduction of MVSs in Greece – if not across the board, at least for companies intending to go public – in view of the incoming competition for fundraising and the cost involved in moving to another state to accommodate MVSs.



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